

ESTATE OF IKEY REECE WAUQUA : Order Vacating Decision and Remanding
: Case
:
: Docket No. IBIA 00-66
:
: April 4, 2001

Appellant Jo Ann Wauqua Gressett seeks review of an April 12, 2000, order denying rehearing entered in the estate of Decedent Ikey Reece Wauqua by Administrative Law Judge Richard L. Reeh. IP OK 153 P 98. For the reasons discussed below, the Board of Indian Appeals (Board) vacates the April 12, 2000, order and Judge Reeh's May 7, 1999, order approving will and decree of distribution and remands this matter to the Judge for further consideration.

Decedent, a Comanche Indian, died on July 9, 1996. Judge Reeh held hearings to probate Decedent's trust estate on January 22 and April 19, 1999. At the January hearing, evidence was taken concerning Decedent's family relationships. Testimony showed that Decedent was married and divorced numerous times, but was apparently not married at the time of his death. Other testimony indicated that Decedent was survived by seven children: Appellant, Michael Wauqua, Norris Wauqua, Shirley Fay Howery, Elkin Wayne Wauqua, Ikey Lee Wauqua, and Vicky Sue Wauqua.

A document dated November 22, 1963, and purported to be Decedent's last will and testament was introduced at the January hearing. The document presented as Decedent's will states in several places that it is the will of Ikey Lee Wauqua. The first paragraph of the document devises the testator's entire estate to "My three children, Shirley Faye Wauqua, Elk Wayne Wauqua and Ikey Lee Wauqua, Jr." Because Appellant stated that she intended to challenge the will, Judge Reeh continued the hearing until April.

At the April hearing, Appellant contested the will on at least the grounds that the document introduced as Decedent's will purported to be the will of Ikey Lee Wauqua rather than Ikey Reece Wauqua; that she did not believe Decedent would have disinherited her; and that she did not believe that Decedent was aware in later years that he had made a will. The November 22, 1963, will had been prepared on a Bureau of Indian Affairs form by an employee of the Department of the Interior. It was witnessed by the scrivener and by another Departmental employee. It appears that both of these individuals were employed in the Office of the Solicitor. At the time of the April 1999 hearing, the will scrivener was deceased. The second will witness

testified that he had no recollection of the preparation or execution of this particular will, but he did remember the date because it was the day that President John F. Kennedy was assassinated. The will witness recounted some of his actions on that day, but still could not remember the execution of this will.

Judge Reeh approved the will on May 7, 1999. The full discussion of the will reads:

4. Will. That a Will dated November 22, 1963 was submitted. The instrument was duly executed in accordance with all requirements for making a Will to dispose of Indian trust property under 43 C.F.R. § 4.260. Although there was an objection, based upon the evidence adduced, this will should be admitted to probate, and it should be approved.

May 7, 1999, Order at 1.

Appellant wrote a letter objecting to approval of the will. Judge Reeh denied rehearing by order dated April 12, 2000. His order states:

[Appellant's] letter cannot be considered a Petition for Rehearing because it is not under oath. 43 CFR § 4.241(a) requires such Petitions to be under oath. Nevertheless, a review of the estate file was undertaken. The review confirmed that the will should have been approved. Its only beneficiaries were the Petitioner, Elk Wayne Wauqua, and Ikey Lee Wauqua, Jr. [1/] Other heirs-at-law received no distribution of Indian trust property from this estate.

Evidence presented by the other putative family members did, however, preponderate in favor of determining that they were heirs-at-law who would have taken if there not been a valid will [sic]. Since they were excluded by the will, none receives any distribution from this estate.

[Appellant's] letter does not comply with requirements of 43 CFR § 4.241. [Appellant] was advised of the provision which requires Petitions for Rehearing to be under oath in a Notice of Decision to which the Order was attached. She failed to comply with that provision.

Apr. 12, 2000, Order at 1.

^{1/} The Board notes that this statement is obviously incorrect. Appellant, who was the Petitioner before Judge Reeh, was not a beneficiary under the Nov. 22, 1963, will. The third beneficiary was Shirley Faye Wauqua.

Appellant then filed the present appeal. Only she has participated in the appeal.

The Board finds that Judge Reeh's decision here must be vacated and the matter remanded to him for further consideration. The Board takes this action both in response to arguments raised by Appellant and pursuant to its authority under 43 C.F.R. § 4.318 to exercise the inherent authority of the Secretary to correct a manifest injustice or error.

Following the long-standing holdings of the Department's Office of the Solicitor, which heard Indian probate appeals before the creation of the Office of Hearings and Appeals and the Board in 1970, the Board has consistently held that decisions in Indian probate cases are governed by the Administrative Procedure Act, 5 U.S.C. §§ 554-557 (APA). *See, e.g., Estate of Charles White*, IA-654 (Mar. 27, 1963); *Estate of Lucille Mathilda Callous Leg Ireland*, 1 IBIA 67, 78 ID 66 (1971); *Estate of San Pierre Kilkakhan*, 1 IBIA 299, 79 ID 583 (1972); *Estate of George Swift Bird*, 10 IBIA 63 (1982); *Estate of Joseph Wyatt*, 11 IBIA 244 (1983). A major and fundamental requirement of the APA is that the deciding official must present findings of fact and conclusions of law in his or her decisions.

Judge Reeh has not provided findings of fact or conclusions of law in support of his approval of the will at issue in this proceeding. In fact, he has failed to even acknowledge that there was a discrepancy between the name of the testator on the will which he approved and the name of the Decedent. He has also failed to address any of the arguments which Appellant raised against approval of the will.

The Board, like others with access to the entire probate record in this estate, can speculate as to Judge Reeh's reasons for concluding that the November 22, 1963, document should be approved as Decedent's will. However, the Board specifically declines to engage in such speculation. The necessity for speculation--both by persons affected by an agency decision and by an agency or judicial reviewing body--is precisely the problem which the APA sought to end. It is the deciding official's responsibility clearly to set forth in his or her decision the facts on which the decision is based and the legal conclusions drawn from those facts. Failure to do so will result in vacation of the decision and remand for an appropriate decision setting forth findings of fact and conclusions of law as required by the APA and by consistent and long-standing Departmental precedent. 2/

2/ The Department chose to require its deciding officials in Indian probate matters to follow the APA at a time when probate proceedings were not clearly governed by the APA and when the Departmental deciding officials were not Administrative Law Judges selected under 5 U.S.C. § 3105. The Board continues to hold that all Indian probate cases are governed by the procedural requirements of the APA, regardless of the identity of the individual deciding official.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. §§ 4.1 and 4.315, Judge Reeh's May 7, 1999, and April 12, 2000, orders are vacated and this matter is remanded to him for further consideration in accordance with this opinion. On remand, the Judge shall consider all of the evidence for and against the will, including all of the arguments raised by Appellant at any point in this proceeding.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge